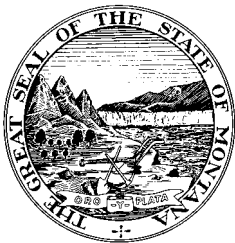


DEPARTMENT OF ADMINISTRATION
GENERAL SERVICES DIVISION
STATE PROCUREMENT BUREAU

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**Applying Prevailing Wages for Contracts Issued
Under the Montana Procurement Act**

Prepared by the Department of Labor and Industry and
the Department of Administration
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1. What contracts issued under the Montana Procurement Act are subject to the prevailing wage requirements?

Generally, all public works contracts in which the total cost of the contract is in excess of \$25,000 are subject to the payment of prevailing wages. A "public works contract" is defined as "a contract for construction services or **nonconstruction services** let by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is in excess of \$25,000." See section 18-2-401(11)(a), MCA. Those contracts clearly excluded from "construction services" are "engineering, superintendence, management, office, or clerical work" and "consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law." A substantive list is supplied of "nonconstruction services" contracts to which the prevailing wage requirements apply at section 18-2-401(9)(a) through (I), MCA. The Legislature's intent in providing the list was to limit and clearly define those occupations subject to the prevailing wage requirements. Those contracts excluded from "nonconstruction services" are "management, office, or clerical work."

2. What is a "contract period or term" for purposes of applying the prevailing wage requirement? Is it only the initial contract term, or does it include the possible options the State has to renew the contract for additional periods?

It is the initial contract term plus any "possible" options the State has to renew the contract for additional periods. By having a contract with renewal options in it, the State is risking application of the prevailing wage requirements if the total of the sums paid under the contract exceeds \$25,000. In addition, rules 24.17.141 and/or 24.17.144 of the Administrative Rules of Montana (ARM) speak to the requirement to pay the prevailing rate of wages on contracts or bid specifications for public works in excess of \$25,000.

3. The State of Montana issues bids from which multiple contracts to multiple vendors may, on occasion, be awarded. If the individual contracts issued as a result of a bid do not exceed \$25,000, must the requirement for the payment of prevailing wages be included?

In accordance with section 18-2-401(11) (a), and ARM rules 24.17.161, 24.17.501 and 24.17.621, the requirement to pay the prevailing wage rates on contracts exceeding \$25,000 is determined by the total value of the contract or bid specifications. It is not determined by the value of contracts subsequently issued by the State. Thus, if the State issues a bid with multiple contracts, all contracts are subject to payment of the prevailing wages if the total of the contracts bid exceeds \$25,000. In other words, an invitation for bid is considered one contract regardless whether a single vendor or multiple vendors are awarded the contract.

4. At times, the State will issue bids for the same type of service at varying times of the year. For instance, we might issue a bid for janitorial services for half of the buildings on the capitol complex in January and another bid for the other half of the buildings in June due to varying contract cycles. Neither group would exceed \$25,000 per year. Should we require the payment of prevailing wages?

The determining factors for considering whether or not the requirement for payment of prevailing wages exists is how the invitation for bid was issued (single or multiple contracts), contract period, renewal options (if any), total cost, etc.

5. At times, a state agency may issue a bid for non-construction services for field sites around the state. Taken alone, none of the sites would exceed the \$25,000 per year mark. However, if added together in the bid, the sum of the potential contracts would exceed \$25,000 per year. Should prevailing wages be required?

Again, if the State issues a single bid for multiple contracts which total in excess of \$25,000, all contracts are subject to payment of the prevailing wages, as it is considered one contract regardless if the bid is for field sites around the state.

6. A contract is issued for a three-year period. The contractor is required to pay the prevailing wage in effect at the time the contract was signed. But what rate should the contractor pay if after the initial three-year period, the contract is renewed for a new two-year period?

If the initial contract provides for an extension of the contract at the same negotiated compensation rates as originally agreed upon, this constitutes a “renewal” that would utilize the same prevailing wage rates in effect at the time of the initial agreement. Should the contract, however, provide for a modified compensation rate for the vendor during the agreed extension of the contract, this would constitute a “renegotiation” and the prevailing wage rates in effect at the time of such renegotiation would apply.

7. Must business owners pay prevailing wages to family members in their employ?

Yes. There is no exemption for family members of owners for the purposes of paying prevailing wages.

8. Must prevailing wages be paid when contracting with Sheltered Workshops for services such as janitorial or mail handling?

No. House Bill 315, passed by the 2003 Legislature, provided an exemption to the prevailing wage statutes for this situation under section 18-2-403(5), MCA. The new provision became effective immediately upon passage and approval.

9. Does the specific prevailing wage rate or rate book have to be attached to the bid document or can it simply reference DLI's website?

Section 18-2-422, MCA, and ARM 24.17.144 clearly require that all public works contracts and bid specifications must contain a provision stating for each job classification the standard prevailing wage rate, including the fringe benefits, the contractors and employers are obligated to pay. The appropriate wage rate booklet must be attached to the contract/bid documents. Simply referencing DLI's website is not acceptable.

10. When the prevailing wages requirement applies to a contract, does it apply to all disciplines within that contract, with the exception of management, office, or clerical work?

Yes. The pertinent prevailing wage rates for each category would apply to all disciplines within that contract, with the exception of management, office, and clerical work.

11. What if a project includes several job categories and some of these categories are not listed in the rate books, i.e., boat or snowmobile operation? Do we assume that prevailing wage rates do not apply to these categories or how do we determine which rate should apply?

The absence of specific job categories (within a rate booklet) does not necessarily imply payment of prevailing wages is not required. If there are job categories not listed in the rate books, you will need to contact DLI's Research and Analysis Bureau. Under DLI's current administrative rule, ARM 24.17.124, a public contracting agency has the ability to request, at least 30 days prior to advertising for bids or letting a contract, establishment of a special job classification and commensurate rate of wages for a particular craft, classification or type of worker needed for that particular project.

12. Section 18-2-421, MCA, requires that a notice of acceptance and the completion date of the project must be sent to the Department of Labor and Industry when a public works project in the amount of \$50,000 or more is accepted by the public contracting agency. Does the acceptance and completion date notice requirement of section 18-2-421, MCA, apply to "nonconstruction" services? If so, when would the notice be issued?

Yes, the notice does apply to "nonconstruction" services. It should be issued when all the terms of the contract have been satisfactorily performed, and when the initial contract and any permitted extensions have expired. The "completion date of the project" for nonconstruction services would be the last date upon which services were rendered. The notice should state that it is the State of Montana's approval and final acceptance of the project and provide the date of acceptance. In addition, should a warranty period exist, the beginning and completion dates should be included. This notice then triggers the DLI's 90-day audit period to determine whether the contractor has paid workers less than the standard prevailing wage. The State Procurement Bureau has developed a Notice of Completion form that can be accessed at the following website address:

<http://www.discoveringmontana.com/doa/gsd/css/Resources/Forms.asp>.